

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1799 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgement?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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BADI HUSSEN AMIBHAI

Versus

NOORMAMAD IBRAHIM MESANIYA  
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Appearance:

MR SURESH M SHAH for Petitioner  
Mr.Dagli, for  
MR YOGESH S LAKHANI for Respondent No. 1, 2  
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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 17/11/2000

ORAL JUDGEMENT

By this revision application, the petitioner has challenged the order passed by the Deputy Collector, Morvi, in Revision Application No.71 of 1995. By the aforesaid order, the Deputy Collector has set aside the

order of the Mamlatdar passed under Section 5 of the Mamlatdar Court's Act. The petitioner herein had filed a suit before the Mamlatdar, Wankaner being of Suit No.3 of 1994 by resorting to Section 5 of the Mamlatdar Court's Act on the ground that he is the owner of certain agricultural land, admeasuring 2 acres and 3 gunthas in Survey No.137/2 and that the defendants are the owners of adjoining land bearing Survey No.137/1 and that the defendants are obstructing his right of way for passing through the aforesaid land of the defendants. The said suit for declaration and injunction was filed before the Mamlatdar, Wankaner under the Mamlatdar Court's Act. The Mamlatdar, Wankaner on 1.7.1995, allowed the said suit and granted injunction to the plaintiff, restraining the defendants from obstructing the plaintiff from passing through the land bearing Survey No.137/1 along with their agricultural implements. The said order of the Mamlatdar was challenged by the present applicant before the Deputy Collector, Morvi by filing revision application. The Deputy Collector, Morvi found that earlier, civil suit was filed before the regular Civil Court, being Suit No.34 of 1993, in which interim injunction application was rejected by the Civil Court and that even proceedings under the Mamlatdar Court's Act was also earlier instituted, being Suit No.2 of 1993, and the said suit was also withdrawn from the Court of Mamlatdar. Under these circumstances, it was found that in view of the aforesaid background, the Mamlatdar should not have exercised powers under Section 5 of the Act. Against the aforesaid order of the Deputy Collector, the petitioner has filed this revision application under Section 115 of CPC.

I have heard Mr.Shah for the petitioner and Mr.Dagli for the respondents.

Looking to the reasons given by the Deputy Collector, it cannot be said that he has exceeded the jurisdiction in passing the impugned order. Not only that, even though the impugned order of the Deputy Collector is as back as of July, 1996, thereafter, there is no interim order of this Court. Even when the revision was admitted in 1998, no interim relief was granted. Even otherwise, as per the settled position of law, second revision before this Court also would not be maintainable as this is a revision against the order in revision. In that view of the matter, this Revision Application is not maintainable and the order of the Deputy Collector, Morvi is not required to be interfered with in this revision application. It is, however, clarified that if the petitioner has got any right for

the purpose of passing or re-passing through the disputed land, he can ventilate the same before a civil court if he thinks fit and if such suit is maintainable in law, the same can be entertained on merits. Mr.Dagli submits that such suit will not be maintainable. This Court is not expressing any opinion on merits, especially when this Court is not called upon to adjudicate upon the same. It is for the competent court to decide ultimately whether any relief can be granted in the said suit or not. This Court is merely confirming the order of the Deputy Collector as per the reasons given in this judgment. It is also clarified that this Court has also not considered whether there is any right of way available for the plaintiff or not.

In view of what is stated above, this revision application is required to be dismissed and it is accordingly dismissed. Rule is discharged with no order as to costs.

17th November, 2000 ( P.B. Majmudar, J. )

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(apj)